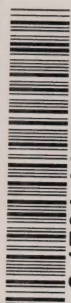


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Canada... Restrictive Trade
Practices Commission

Report concerning alleged
instance of resale price
maintenance in the distribution
and sale of television sets in
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RESTRICTIVE TRADE PRACTICES COMMISSION

REPORT

Concerning Alleged Instance of Resale Price Maintenance
in the Distribution and Sale of Television Sets
in the Toronto District



DEPARTMENT OF JUSTICE
OTTAWA



EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1954.

RESTRICTIVE TRADE PRACTICES COMMISSION

REPORT

CONCERNING ALLEGED INSTANCE OF RESALE PRICE
MAINTENANCE IN THE DISTRIBUTION
AND SALE OF TELEVISION SETS
IN THE TORONTO DISTRICT

COMBINES INVESTIGATION ACT

Ottawa
1954

Government
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RESTRICTIVE TRADE PRACTICES COMMISSION

C. Rhodes Smith, Q.C., M.A., LL.B., B.C.L.
Chairman

Guy Favreau, Q.C., B.A., LL.B.
Member

A.S. Whiteley, B.A., M.A.
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RESTRICTIVE TRADE PRACTICES COMMISSION

Room 451, Justice Building,
Ottawa, October 25, 1954.

Honourable Stuart S. Carson, Q.C.,
Minister of Justice,
Ottawa, Ontario.

Sir:

I have the honour to submit to you herewith the report of the Restrictive Trade Practices Commission dealing with an alleged instance of resale price maintenance in the distribution and sale of television sets in the Toronto district.

The matter was brought before the Commission by the submission of a statement of the evidence obtained in the inquiry by the Director of Investigation and Research under the Combines Investigation Act and has been dealt with in accordance with the provisions of Sections 18 and 19 of the Act.

Argument on the Statement of Evidence was heard by the Commission in proceedings before Mr. A. S. Whiteley and Mr. Guy Favreau, Q.C., members of the Commission, at Montreal on August 17, 1954. In these proceedings Mr. J.D. Wentzell appeared on behalf of the Director of Investigation and Research and Messrs. Hugh E. O'Donnell, Q.C. and C. W. Leslie appeared on behalf of the parties mentioned in the Statement of Evidence.

Yours faithfully,
(SGD.) C. R. SMITH

Chairman.

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CHAPTER I

INTRODUCTION

1. Reference to the Commission

This inquiry was brought before the Restrictive Trade Practices Commission under Section 18 of the Combines Investigation Act, R.S.C. 1952, Chapter 314, which reads as follows:

"18. (1) At any stage of an inquiry,

- (a) the Director may, if he is of the opinion that the evidence obtained discloses a situation contrary to section thirty-two or thirty-four of this Act, or section four hundred and ninety-eight or four hundred and ninety-eight A of the Criminal Code, and
- (b) the Director shall, if so required by the Minister, prepare a statement of the evidence obtained in the inquiry, which shall be submitted to the Commission and to each person against whom an allegation is made therein.

(2) Upon receipt of the statement referred to in subsection one, the Commission shall fix a place, time and date at which argument in support of such statement may be submitted by or on behalf of the Director, and at which such persons against whom an allegation has been made in such statement shall be allowed full opportunity to be heard in person or by counsel.

(3) The Commission shall, in accordance with this Act, consider the statement submitted by the Director under subsection one together with such further or other evidence or material as the Commission considers advisable.

(4) No report shall be made by the Commission under section nineteen or twenty-two against any person unless such person has been allowed full opportunity to be heard as provided in subsection two."

The Director of Investigation and Research under the Combines Investigation Act submitted to the Restrictive Trade Practices Commission a Statement of Evidence dated the 25th day of

June, 1954, which contained the following allegations:

1. That the Toronto Distribution Division of RCA Victor Company, Ltd., (hereinafter sometimes referred to as "RCA Victor") between the 25th and the 30th of March, 1954 cancelled, with immediate effect, the television franchise of, and refused to sell or supply television sets or television accessories to, Lawson Appliances at 1640 Avenue Road, Toronto, Ontario, for the reason that Lawson Appliances had resold or offered to resell RCA Victor television receiving sets and accessories at a price less than a price or minimum price specified by RCA Victor.
2. That on April 7, 1954 RCA Victor notified Lawson Appliances in writing that the cancellation of their RCA Victor television franchise was not to be effective until 30 days from the date of notice in accordance with paragraph nine (9) of the television franchise agreement; but despite this extended period and before termination thereof, Lawson Appliances was unable between March 30, 1954 and April 21, 1954 (when hearings were conducted) to buy RCA Victor television receiving sets or accessories and was refused supplies because Lawson Appliances had resold or offered for resale RCA Victor television receiving sets and accessories at a price less than a price or minimum price specified by RCA Victor.
3. That in the circumstances the distribution of suggested retail price lists to Lawson Appliances, among others, was an attempt to require or induce Lawson Appliances to resell television receiving sets and accessories at a price not less than a price or minimum price specified by RCA Victor.
4. (a) That the actions alleged in paragraphs 1, 2 and 3 hereof were carried out by the RCA Victor Company, Ltd., by and through its officials and employees, all of whom were acting in the course of their employment and within the scope of their authority as such officials and employees.

(b) That the said actions were those of officials and employees of the RCA Victor Company, Ltd., at its Toronto Distribution Division and were not the result of a general sales policy of the said Company.

(c) That L. W. Boothe, who was an official or employee at the Toronto Distribution Division of the RCA Victor Company, Ltd., during the whole of the periods mentioned in paragraphs 1, 2 and 3, was chiefly responsible for the actions so alleged.

At the same time that the Statement of Evidence was submitted to the Restrictive Trade Practices Commission, copies were sent by the Director to those against whom allegations were made therein.

2. Hearings and Witnesses

Hearings for the taking of evidence in the inquiry were held, on application by the Director of Investigation and Research, before Mr. A. S. Whiteley, a member of the Commission, at Toronto, Ontario, on April 21 and 22, 1954, when the following witnesses appeared:

Mr. A. D. Lawson, proprietor, Lawson Appliances
Mrs. Olive V. Chambers, office manager, Lawson Appliances
Mr. Leo R. Heath, salesman, Lawson Appliances
Mr. H. G. Marpole, secretary, RCA Victor Company, Ltd.
Mr. L. W. Boothe, manager, Toronto Distribution Division,
RCA Victor Company, Ltd.
Mr. R. G. Powers, salesman, RCA Victor Company, Ltd.

In giving notice of the fixing of a time and place for the hearing of argument on the Statement of Evidence submitted by the Director, the Commission informed the parties concerned that they would have full opportunity to be heard in person or by counsel, and that they would have the opportunity of further examining any witness who had been called during the course of the inquiry or of having called any additional witnesses or of submitting additional documentary evidence. At the hearing for argument which was held at Montreal, P.Q. on August 17, 1954, the parties concerned were represented by counsel. Messrs. H. G. Marpole, L. W. Boothe and R. G. Powers were recalled to give further evidence and the following additional witnesses were examined:

Mr. F. W. Radcliffe, vice-president, in charge of distribution,
RCA Victor Company, Ltd.
Mr. G. A. Walter, sales manager, Toronto, RCA Victor
Company, Ltd.
Mr. W. J. A. Gardner, territory representative, Toronto,
RCA Victor Company, Ltd.
Mr. Leo Levitt, Leo Levitt Appliances Limited, Toronto,
Ontario.

Certain documentary evidence was also received at the hearing.

3. Legislation Affecting Resale Price Maintenance

Legislation affecting the practice of resale price maintenance was enacted at the Second Session of the Parliament of Canada in 1951, following and in accordance with recommendations made in an interim report on this subject by the Committee to Study Combines Legislation submitted in October, 1951.

The following definition of the practice was given in the Committee's interim report:

"By resale price maintenance we understand the practice designed to ensure that a particular article shall not be resold by retailers, wholesalers or other distributors at less than the price prescribed by the supplier, that is, in most cases, the manufacturer."

By Section 11 of Chapter 30 of the Statutes of Canada, 1951 (2nd Session) a new Section 37A was added to the Combines Investigation Act, which Section 37A was renumbered as Section 34 by Section 4 of Chapter 39 of the Statutes of Canada, 1952. This Section, which came into force on December 29, 1951, enacts as follows:

"34. (1) In this section 'dealer' means a person engaged in the business of manufacturing or supplying or selling any article or commodity.

(2) No dealer shall directly or indirectly by agreement, threat, promise or any other means whatsoever require or induce or attempt to require or induce any other person to resell an article or commodity

- (a) at a price specified by the dealer or established by agreement,
- (b) at a price not less than a minimum price specified by the dealer or established by agreement,
- (c) at a markup or discount specified by the dealer or established by agreement,
- (d) at a markup not less than a minimum markup specified by the dealer or established by agreement, or
- (e) at a discount not greater than a maximum discount specified by the dealer or established by agreement,

whether such markup or discount or minimum markup or maximum discount is expressed as a percentage or otherwise.

(3) No dealer shall refuse to sell or supply an article or commodity to any other person for the reason that such other person

(a) has refused to resell or to offer for resale the article or commodity

(i) at a price specified by the dealer or established by agreement,

(ii) at a price not less than a minimum price specified by the dealer or established by agreement,

(iii) at a markup or discount specified by the dealer or established by agreement,

(iv) at a markup not less than a minimum markup specified by the dealer or established by agreement, or

(v) at a discount not greater than a maximum discount specified by the dealer or established by agreement, or

(b) has resold or offered to resell the article or commodity

(i) at a price less than a price or minimum price specified by the dealer or established by agreement,

(ii) at a markup less than a markup or minimum markup specified by the dealer or established by agreement, or

(iii) at a discount greater than a discount or maximum discount specified by the dealer or established by agreement.

(4) Every person who violates subsection two or three is guilty of an indictable offence and is liable on conviction to a fine in the discretion of the court or to imprisonment for a term not exceeding two years or to both."

This new section of the Combines Investigation Act forbids a manufacturer or other supplier from requiring or inducing, directly or indirectly, any other person to resell an article at a specified price or at not less than a minimum price, and makes it unlawful for

a supplier to refuse to sell or supply an article or commodity to any other person for the reason that such person has resold or offered to resell the article or commodity at less than a price specified by the supplier or has refused to resell or offer for resale the commodity at not less than a specified price.

CHAPTER II

DISTRIBUTION ARRANGEMENTS OF RCA VICTOR WITH FRANCHISE DEALERS OF TELEVISION SETS

The RCA Victor Company, Ltd. is a Canadian incorporated company with head office in Montreal. The distribution of this company's products is handled through branch offices located at Vancouver, Calgary, Winnipeg, Toronto, Montreal and Halifax. At each of these branch or district offices there is a district manager who supervises the operations of the branch. The district managers are responsible to and under the direction of a vice-president at the head office of the company who is in charge of the Distribution Department. Warehouses are maintained at the district offices and it appears to be the practice of the company to bill goods shipped to a district office which then issues a branch invoice when a sale is made to a customer.

For the purpose of arranging for retail dealer representation, the company divides its products into various groups, among which may be mentioned television receiving sets, radio receivers and record playing instruments and home appliances. A retail dealer interested in handling a group of RCA Victor products would make application to become a franchise dealer and if the application was accepted he would be supplied with goods on the conditions set out in the franchise agreement. In the normal course, an application by a dealer would be recommended by a district salesman and after being approved by the district manager would be forwarded to the Distribution Department at the head office of the company for acceptance.

At the time of the inquiry the franchise agreement form for television receiving sets in use by RCA Victor provided, in part, as follows:

"This application by the undersigned (hereinafter called 'the dealer') to RCA Victor Company, Ltd., (hereinafter called 'RCA Victor') for RCA Victor franchise is made on the following terms and conditions and those on the reverse side hereof and if and when accepted shall constitute an agreement embodying said terms and conditions.

1. All RCA Victor Television Receivers (hereinafter called 'receiver' or 'receivers') bought under this franchise are for re-sale by the dealer at the address below stated, and only to consumers at prices not in excess of maximum list prices as established from time to time by RCA Victor.

2. All purchase orders from the dealer are subject to approval of the Credit Department of RCA Victor. All purchases will be promptly paid for at the due date. Terms of payment will be as established from time to time by RCA Victor.

Delivery will be F.O.B. RCA Victor Warehouse serving the territory in which the dealer is located.

3. All orders received from the dealer are subject to prices in effect at date of shipment. The dealer will have the right to cancel any order or portion thereof for receivers on which an increase in price takes place prior to shipment.
4. RCA Victor receivers will be prominently displayed in the store and connected show-windows of the dealer at all times during the existence of this agreement. The dealer agrees that his use of RCA Victor trade marks and corporate name in advertising, on displays and on the premises, will at all times be in accordance with RCA Victor's policies as advised from time to time. It is expressly understood that upon this agreement being terminated for any cause whatsoever, the dealer agrees to forthwith remove from his show-windows and all other portions of his premises, both interior and exterior, all signs or announcements of any nature or kind referring in any way to RCA Victor receivers or trade marks of RCA Victor and shall forthwith discontinue to make use of RCA Victor trade names and trade marks on his stationery and advertising. The dealer agrees to immediately return all such signs and announcements as referred to above against reimbursement by RCA Victor of any amounts which RCA Victor deems fair and reasonable having regard to any cash payments made by the dealer to RCA Victor in respect thereto and also the age and condition of such signs and announcements.
5. It is understood and agreed that RCA Victor shall not be liable or responsible for impossibility of or delay in delivery by reason of any legislation or order of any governmental authority or by reason of any contract or sub-contract therewith now or hereafter existing or any act of war, fire, flood, strike, lockout, embargo, civil commotion, or any cause beyond the control of RCA Victor, and the latter shall have the right at any time to allocate the whole or any part of its inventories or current production for use or disposition in any manner which in its judgment or discretion will meet the needs of the situation.
6. RCA Victor shall have the right to re-purchase at any time, during the term of this agreement or subsequent thereto any

or all RCA Victor receivers supplied hereunder which the dealer may have in stock at net prices paid by the dealer to RCA Victor for such receiver or receivers.

7. In consideration hereof and of the dealer's order, RCA Victor agrees to extend to the dealer the prices shown in its price schedules as issued from time to time applicable to the classification as set out on the reverse side hereof, to which the dealer is entitled as a result of his purchases of receivers hereunder in each calendar year, with appropriate price adjustments in respect of receivers purchased by the dealer since the preceding January 1st to the time when the dealer may have become qualified for a more favourable classification by reason of his total purchases of receivers hereunder during such period. The dealer acknowledges to have read the current schedule of all net dealer prices of receiver models for all of the above mentioned classifications and to have taken cognizance of the same.
8. The dealer will fully explain to each customer any conditions or limitations which may effect [sic] reception at the customer's location.
9. This agreement shall remain in force from the date hereof subject to termination at any time on thirty (30) days' notice in writing to such effect by either party to the other."

(Exhibit 2)

On the reverse side of the form there are set out the conditions of the warranty given by the company and the obligations of the dealer with respect to servicing television sets. On this side of the agreement form there is also set out a description of dealer classifications, viz. -

"The dealer classifications and the purchases necessary in any calendar year to qualify for such classifications are as follows:

TELEVISION RECEIVERS (excluding accessories)

Classification	Amount of Purchases
"A"	Less than \$2,000.
"B"	\$2,000. to \$4,999.
"C"	\$5,000. to \$24,999.
"D"	\$25,000. and over."

Paragraph No. 7 of the television franchise agreement set out above provides that the dealer will purchase sets from RCA Victor at the prices shown in current price schedules of the company applicable to the classification to which the dealer is entitled. Mr. F. W. Radcliffe gave the following evidence in regard to list prices of

television sets issued by RCA Victor:

- "Q. There is a reference to prices in paragraph No. 1 of the franchise. The prices are referred to as maximum list prices as established from time to time by RCA Victor. How is that done?
- A. As a new model comes out and suggested list prices are established on it, those are sent out to our district offices, to the District Managers, and they in turn are given to the territory representatives, and they inform the dealers.
- Q. Before a new franchise is given to a dealer is he supplied with suggested list prices similar to this Exhibit No. 17?
- A. Yes. At the time a new franchise is given to a dealer he is supplied with list prices on the then listed models.
- Q. Those are suggested list prices referred to in the contract as maximum list prices?
- A. That is right.
- Q. And then subsequent changes are dealt with as you have explained?
- A. As new models come out or any changes are made, then it is handled in the manner I have described."

(Evidence, August 17, 1954, p. 197)

The dealer classification establishes the scale of discount from list prices by which the net cost to the dealer is determined. Mr. L. W. Boothe testified at the inquiry that discounts currently in effect varied according to models and types of television sets. He gave two scales of discounts to illustrate the variation, and to show the range according to dealer classification:

Dealer Classification	Scale of Discount	
	(a)	(b)
"A"	29	28
"B"	30	29
"C"	31	30
"D"	32	30

Mr. Boothe further stated:

" . . . That in general covers it. The only variation from that

was on a group of deluxe models or on carry-overs, on which the maximum worked out at 33 1/3."

(Evidence, April 22, 1954, p. 100)

The company's price list (Exhibit 17) covers a number of lines in addition to television sets and shows the cost price to the dealer and the suggested list price for the different categories of buyers in the various lines. In the case of television sets, a separate page is devoted to each classification of dealer for each group of sets, and the prices for each model or type are shown under the following column headings "Suggested List Price" and "Dealer Cost" for (A), (B), (C) or (D) class of dealer as the case may be.

The franchise agreement form quoted, in part, above provides in paragraph No. 2 that all purchase orders from the dealer are subject to approval of the Credit Department of RCA Victor and that terms of payment will be as established from time to time by the company. Copies of invoices submitted in evidence show that at the time of the inquiry the terms of payment established by the company were "Terms: Net 10th Following - Except 2% 10th Following on Items Shown in Cash Discount Column," (Exhibit 44).

Mr. G. A. Walter stated that at the time a franchise is granted to a new dealer a credit limit is established on the basis of financial information submitted. Orders may then be taken for delivery to the dealer up to the limit of credit established and subject to the account being paid by the due date. Mr. Walter said further in evidence:

"Once an account becomes overdue the Credit Department must approve before further terms can be extended. That is definitely the normal procedure."

(Evidence, August 17, 1954, pp. 257-8)

In some cases, shipments may be made on a C.O.D. basis when an account is overdue or the dealer has reached his credit limit, but Mr. Walter stated that this method of selling is not customary (Evidence, August 17, 1954, p. 258).

When a retailer is accepted as a franchise dealer for television sets by RCA Victor a dealer classification must be established to provide the basis on which sales will be made by the company. Mr. Walter stated in evidence:

"Generally speaking, but not necessarily always, a dealer is started at the basic A category discount, or possibly B, depending on the particular dealer [in] question."

(Evidence, August 17, 1954, p. 248)

Mr. Walter further stated:

"The classifications are reviewed on a yearly basis, a calendar basis, and at the end of December of every year we examine all dealer purchases. If they have earned a higher category than they were granted, they automatically are granted the better category and the appropriate discount or at least rebate."

(Evidence, August 17, 1954, pp. 248-9)

Thus a franchise dealer who built up his volume during the calendar year above the limit of the classification in which he had been placed would be given a rebate on his purchases during the year in accordance with his new classification.

RCA Victor engages in what is called "national" advertising in promoting the sale of its television sets and other products. This is the policy of placing advertisements in periodicals with national circulation or in newspapers as direct advertisements of the company. In addition, the company pursues what is called a "co-operative advertising policy" for radio, television, radio-phonographs and appliances. A copy of a statement of policy under date of January 1, 1954 was submitted on behalf of RCA Victor. This statement reads, in part, as follows:

"PURPOSE

The purpose of co-operative advertising is to help the authorized RCA Victor dealer further develop increased consumer demand and thus directly aid him in increasing his turnover and profits on his stocks of RCA Victor Instruments and Appliances.

EXTENT OF PARTICIPATION

RCA Victor will share 50-50 with the dealer on the cost of approved advertising up to 4% of his net purchases of RCA Victor Radios, Television Receivers and Victrola Radio-phonographs, and, separately, up to 4% of his net purchases of Appliances, within each calendar year during the terms hereof.

APPROVED MEDIA FOR CO-OPERATIVE ADVERTISING

- 1) Standard newspapers and such neighborhood newspapers as are approved by the RCA Victor district office supplying the dealer.
- 2) Outdoor advertising, including 24 sheet posters, 3 sheet posters and painted signs as approved in advance by the dealer's RCA Victor district office.

- 3) Radio and Television advertising consisting of spot announcements and/or programs.
- 4) Motion picture theatre advertising on trailers and slides.
- 5) Media not included in the above must be approved in advance by the dealer's RCA Victor district office.
- 6) RCA Victor Instrument and Appliance promotional material authorized by the Head Office of RCA Victor in Montreal.

COPY AND LAYOUT

Dealers may prepare their own ads provided that these concur in general details with those supplied by the Advertising Department of RCA Victor in Montreal. EVERY ADVERTISEMENT SHOULD CONTAIN AN ILLUSTRATION OF ONE OR OTHER OF THE RCA VICTOR TRADEMARKS IN THE APPROVED FORM AS SHOWN ON THE REVERSE SIDE HEREOF. No credits will be issued for any advertising from which the above is omitted.

RCA Victor advertising in general advertisements in which competitive products are featured will NOT be approved for credit under the RCA Victor 50/50 co-operative advertising plan.

RCA Victor advertising in general advertisements must be given the appearance of an individual advertisement. Only that portion of the ad devoted exclusively to RCA Victor will be eligible for co-operative advertising credit. Advertisements in which other merchandise overlaps RCA Victor or which is generally confused or misleading will not be eligible for credit. Dealers should block off an RCA Victor advertisement if it forms part of a composite merchandise advertisement.

Any advertising which, in the opinion of the RCA Victor district office, is misleading or contrary to RCA Victor's established policy will not be eligible for credit."

(Exhibit H-1)

The statement then goes on to explain how credits are to be claimed by the dealer and concludes by stating that the policy will be in effect for the calendar year and will be renewed automatically for further periods of one calendar year.

CHAPTER III

ATTITUDE EXPRESSED BY RCA VICTOR TOWARD RESALE PRICE MAINTENANCE

Prior to the passage of the legislation forbidding the practice of resale price maintenance RCA Victor had had contracts with dealers requiring the observance of resale prices named by the company. The policy of the company following the adoption of the amendment to the Combines Investigation Act was described by Mr. F. W. Radcliffe in his evidence, as follows:

"Well, as we all know, on December 31, 1952, legislation was passed prohibiting price maintenance. So immediately after that we advised all our district managers that that was illegal and while contracts with that in had been in existence up to that time we immediately advised them that that portion was no longer to be observed. Sales meetings were held right across Canada by our managers and all our territory representatives and salesmen were told that any form of price maintenance was illegal and that the company would strictly observe the law as passed on December 31, and that has been our policy right throughout."[x]

(Evidence, August 17, 1954, p. 194)

[x] After the hearing at Montreal, RCA Victor submitted to the Commission a copy of a telegram sent to all District Office Managers on January 2, 1952, which read as follows:

"PRICE MAINTENANCE CLAUSE IN EXISTING DEALER AGREEMENTS NO LONGER APPLIES. NEW CONTRACTS UNDER PREPARATION NO ATTEMPT MUST BE MADE BY ANY COMPANY REPRESENTATIVE TO FORCE DEALERS TO SELL AT PRESENT LIST PRICES. FURTHER INSTRUCTIONS WILL FOLLOW WHEN BILL IS FINALLY PASSED BY SENATE." [The latter statement was in error as the bill had been passed by both Houses of Parliament in December, 1951.]

At the same time the company submitted copies of notices sent to its radio, record and home appliance dealers under date of January 9, 1952. The notice to radio dealers was as follows:

"The recently enacted Government Legislation dealing with resale price maintenance relieves you of the obligation to maintain list prices of merchandise purchased from us.

It will be noted from paragraph No. 1 of the television franchise agreement form set out in Chapter II that dealers are required to sell RCA Victor television receivers "at prices not in excess of maximum list prices as established from time to time by RCA Victor." (Exhibit 2).

On November 24, 1953, Mr. F. W. Radcliffe sent a memorandum to each of the company's six district managers in which he referred to a report of a complaint about one of the company's manufacturing competitors that it had refused to deal with a retailer because the latter was cutting prices and then went on:

"I wish you would tell all our Sales Representatives and anyone else who might have cause to discuss with dealers the matter of Franchises, that under no circumstances, at any time, must we discuss adherence to or deviation from our suggested list prices on our products. It is against the law and it will be considered in a very serious light if any man should make this statement, either personally or on behalf of the Company. Just avoid all such conversations or communications in writing entirely. The only reason I know of at the present time why any dealers may not be readily extended our Franchises is because we have adequate representation, do not require further dealers, particularly with the present shortage of TV Receivers, or because the dealers applying have unsatisfactory credit standing in order to adequately handle the volume expected."

(Exhibit 16)

When this memorandum was received by Mr. L. W. Boothe, manager of the Toronto district office of RCA Victor, he brought it to the attention of the members of the sales staff and ten persons are shown as having signed the memorandum after reading it. (Exhibit 16).

All future prices released from time to time for RCA Victor Instruments may be considered as suggested selling prices only.

A 1952 RCA Victor franchise for Radio Receivers, Record Playing Instruments and Television will be forwarded for your signature in the near future."

CHAPTER IV

DEALINGS OF RCA VICTOR WITH LAWSON APPLIANCES, TORONTO

1. Franchise Granted to Lawson Appliances by RCA Victor.

Lawson Appliances is an unincorporated retail appliance and furniture business owned and operated by Arthur D. Lawson at 1640 Avenue Road, Toronto. After a number of years' training and experience in the maintenance and sale of electrical appliances Mr. A. D. Lawson, in 1949, had opened a retail appliance store at 1773 Avenue Road and in 1951 he opened a second store at 2013 Avenue Road. Mr. Lawson then decided to construct suitable store premises at the present address and to deal in furniture as well as electrical appliances. The two earlier locations were closed out and business has been conducted at 1640 Avenue Road since December, 1952.

It appears that for some months in 1950, Lawson Appliances was a RCA Victor franchise dealer for radios and home appliances but owing to the manufacturer's inability at that time to supply certain appliances in the quantities desired by Lawson Appliances the franchises were abandoned by mutual agreement before the end of the year.

Late in 1953, Mr. A. D. Lawson thought it desirable to add a second line of television sets as he had been featuring only one manufacturer's line for some time. Application was made to RCA Victor and franchises dated December 29, 1953 were received by Lawson Appliances for television sets, home appliances and radios and record players. Lawson Appliances also entered into an appliance warranty service agreement with RCA Victor under which Lawson Appliances appointed RCA Victor as its sole agent and service organization to fulfil the obligations under the warranty and service policies applying to RCA Victor products. This agreement was for one year from January 1, 1954 and provided that a service charge would be added to the invoice covering those appliances to which the agreement applied which were sold to Lawson Appliances.

Although the RCA Victor franchise agreements with Lawson Appliances are dated December 26, 1953 the evidence indicates that the company was making sales to Lawson Appliances for some time previously. Exhibit 31 consists of the sales representative's credit recommendations and covering memorandum to the credit department of the company's Toronto branch under date of October 26, 1953. In his recommendation and memorandum the sales representative, Mr. D. Gardner, expresses the opinion that Lawson Appliances is a

potential 10 plus sets per week account with a potential annual sales volume with RCA Victor of \$50,000.

Mr. C. A. Noreus, credit manager of the Toronto branch of RCA Victor forwarded the sales representative's credit recommendation and other statements to the head office of the company on November 13, 1953 with a memorandum which read as follows:

"Form #2107, with copy of Financial Statement and Dun's Report are enclosed together with Sales Representative's Credit Recommendation. Request for Credit Application is also enclosed. His Bank reports him good for our amount of credit and that his dealings with them are satisfactory. The G.M.A.C. report his paper satisfactory and that he is well within their credit limit. They say however, that he is unwilling to divulge all the information they ask for and this is confirmed as we asked for a copy of his operating statement, which he refused to give us.

He has stated that he has not given his operating statement to any supplier and will not do so for us. Most suppliers report him good pay, with extensions of an additional 30 days at times. We did business with him a few years ago but he discontinued buying our products as we could not supply him with the amount of merchandise he wanted.

I believe however, that he is quite good for \$5,000 line of credit. We shall watch his operations as we believe he will require more accomodation [sic]. When that time comes however, perhaps we shall be able to obtain his operating statement. The G.M.A.C. informed me that they intend to insist on getting this information at the end of the year, when his account will again come up for revision."

(Exhibit 34)

Although Mr. Noreus' memorandum suggests that Lawson Appliances was being granted a line of credit in the amount of \$5,000 other evidence indicates that the limit was set at \$4,000. In regard to the dealer classification for the purchase of television sets from RCA Victor, Mr. G. A. Walter stated in evidence that Lawson Appliances was first placed in "A" category but as purchases during the last three months of 1953 amounted to about \$13,000 the account was changed to class "C" and a rebate given on the purchases previously made.

Until March 25, 1954 there is no indication in the evidence of any serious difficulties between RCA Victor and Lawson Appliances in the sale of RCA Victor television sets by the latter. The volume of purchases of all lines from RCA Victor by Lawson Appliances, based

on invoices covering the period November 3, 1953 to March 24, 1954 is given as follows in the Statement of Evidence:

<u>Month</u>	<u>Credit Purchases</u>	<u>C.O.D. Purchases</u>	<u>Total Purchases</u>
November, 1953	\$3,034.33	\$1,030.50	\$4,064.83
December, 1953	7,675.25	Nil	7,675.25
January, 1954	2,088.17	2,919.93	5,008.10
February, 1954	4,536.09	2,394.54	6,930.63
March, 1954	1,936.72	1,373.86	3,310.58
		Total	<u>\$26,989.39</u>

The relatively high level of credit purchases in December, 1953 and the absence of any C.O.D. purchases in that month may, perhaps, be explained by a variation in credit policy which was described in the evidence of Mr. L. W. Boothe, as follows:

" . . . at certain periods of the year when business is good, Head Office will permit the branch to exceed the credit limit by some percentage that is established, without demanding payment. At other seasons of the year, when they know collections are slow, they will rescind that right, and when a dealer reaches his point at a time when the credit manager is unable to exceed the limit set, on his judgement, he then has to apply for special permission to take care of any purchases that would be allowed over and above that amount, even though it was within the limit that he was able to do himself, I will say, prior to the first of the year."

(Evidence, April 22, 1954, p. 106)

The average monthly purchases, as shown by the figures above, would be in excess of \$5,000 and if continued over a twelve month period would have exceeded the estimate of \$50,000 given in the sales representative's credit recommendation when the application of Lawson Appliances for a franchise was under consideration.

On March 6, 1954 Mr. Lawson wrote to Mr. Noreus, credit manager, Toronto Distribution Division, RCA Victor, enclosing a financial statement of Lawson Appliances for the firm's fiscal year ended December 31, 1953. Mr. Noreus acknowledged the receipt of the statement in a reply dated March 10, 1954 in which he wrote:

"Many thanks for the copy of your Financial Statement of December 31st, 1953.

The statement is one that you can rightfully be proud of. Your current liabilities are a little high in relation to your current assets but I can understand that this is due

to the probable outlay in your new building and conditions last year which were not entirely of the best. With similar progress this year however, it looks to me that the ratio between current liabilities and current assets will be considerably improved.

Your Operating Statement is excellent. Your gross operating profit of 20.2% is as well as can be expected with the cut-throat competition you have to compete with. It is most gratifying to notice your operating expenses have been kept in line with the reduced gross profit. As a matter of fact Mr. Lawson, it is so good that I would like very much to use it as an example of how a successful operation should be run. Would you mind giving me merely percentages to sales of your various selling and general expenses? This would be a help in giving me an idea of what a well-run operation should cost percentage-wise. Needless to say, no names would ever be disclosed."

(Exhibit 38)

At times Lawson Appliances had advertisements at least once each week in the Toronto evening papers (Evidence, April 21, 1954, p. 28). On occasions when RCA Victor products were included in such advertisements an attempt was made to arrange the material in such a way as to meet the requirements of the co-operative advertising policy of RCA Victor and Lawson Appliances had claimed and received credits from RCA Victor for portions of the advertising costs of such advertisements.

2. Events of March 25, 1954.

The weekly advertisements of Lawson Appliances were usually placed in the Thursday editions of The Toronto Star and The Toronto Telegram. In the latter part of March, Lawson Appliances began an anniversary sale and in connection with the sale inserted advertisements in editions of The Toronto Daily Star and The Toronto Telegram of Thursday, March 25, 1954. The advertisements contained illustrations of four RCA Victor television sets in the upper portion, the remainder was devoted to television sets of another manufacturer, and to refrigerators, washing machines and furniture. The upper portion of the advertisement was laid out roughly in the following form:

LAWSON'S BIG VALUE EVENT . . .

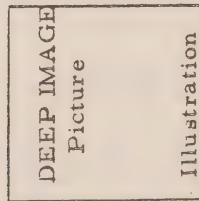
Don't Miss Our ANNIVERSARY SALE

New "DEEP IMAGE" Guaranteed Console Models RCA

LAWSON ARE JUST DUMPING TELEVISION
Appliances

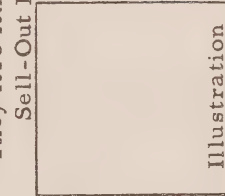
THESE ARE NOT USUAL DEAL PRICES -

They Are Anniversary
Sell-Out Prices



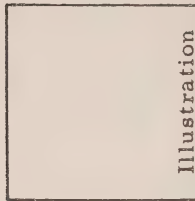
NO,

RCA VICTOR
"LEXINGTON"
Reg. 469.50
Brand New
1954
Lawson's 349



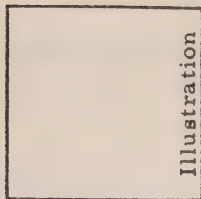
NEVER

RCA VICTOR CUMBERLAND
21" Deluxe Console
With Doors
Reg. 559.50
Brand New
1954
Lawson's 379



BEFORE

RCA VICTOR
"POWELL"
Magic Monitor
Reg. 469.50
Brand New 1954 Lawson's
Only 269



OR
AGAIN

RCA VICTOR
LINTON
With the Super-
Sensitive Magic
Monitor
Reg. 269.95
Brand New 1954
Lawson's
Only 199

Mr. Lawson was asked during his examination on April 21, 1954 why this particular advertisement was published and he gave the following evidence:

"Q. Why did you run this particular ad. on March 25, 1954?

A. Because competition was terrifically keen in television in general and we had had nothing to match what had been going on in other ads. in the paper, in even the RCA Victor's own sets. For example, Caplan Radio, Danforth Radio and several other companies - we have their ads. on file - had cut various RCA Victor sets lower than we could ever hope to cut on those certain models that they advertised. In other words, we just didn't seem to be able to buy them low enough.

Q. And was it in fact an anniversary sale that you were putting on?

A. Yes, and we tried to tie it in to get the lowest possible price. The anniversary sale is still on, as a matter of fact, and we try to obtain our year's lowest prices at the anniversary sale."

(Evidence, April 21, 1954, p.40)

Mr. L. R. Heath gave the following evidence with respect to the prices at which RCA Victor television sets had been offered by other retailers in Toronto in the period preceding March 25, 1954:

"Q. Have you seen advertisements of RCA Victor television at low prices previous to the ad. of Lawson Appliances?

A. Yes, I have.

Q. Were the prices as low as those in the Lawson ad.?

A. In some cases, yes. Perhaps the only exception that I would say to that would be the deep image picture, perhaps; I don't think I have seen that as low as that.

BY MR. WENTZELL

Q. By the deep image you mean what?

A. The Lexington set. I have seen that cut too, but never quite that low. The RCA Linton \$199, yes, I have seen that, and I have seen other sets too that are not appearing here -- the Townsman, which is quite a popular model and sells for more than this Linton does; I have seen that down

to \$229 and \$219 lots of times.

Q. How long previous to that ad.?

A. I would say within the last couple of months previous to this ad. I would say I first started noticing it."

(Evidence, April 21, 1954, pp. 82-83)

The advertisement of Lawson Appliances appeared in the early editions of the newspapers which were distributed about noon on March 25. Shortly after noon Mrs. Chambers of Lawson Appliances received a telephone call at her home from Mr. L. W. Boothe, manager, Toronto Distribution Division, RCA Victor. Mrs. Chambers gave the following evidence in regard to this telephone call and a return call to Mr. Boothe which she made from Lawson Appliances later in the afternoon of the same day:

"Q. Getting back to Mr. Boothe's phone call, would you just tell the Commissioner the details of that phone call? Well, when did he call you first?

A. He called me on March 25 about a quarter to one.

Q. At your home?

A. Yes. The paper comes out about noon hour and apparently he had just seen our ad.

Q. What did he say at that time?

A. He asked me about the price on the deep image in the paper that had come out that day.

Q. That is referring to Exhibit No. 6 now?

A. Yes, these prices, and he said on deep image.

Q. That would be the Lexington model?

A. That is right. And I said, 'Well, Mr. Boothe, I have not seen the paper yet. I am just on my way to work and I would prefer to wait till I get there and would be able to see the paper and the prices.' He said, 'I would like you to check the prices in the paper.' He said, 'They must be wrong.' And I said 'I will call you back when I have checked with the boys.' And he said 'You do that, you check with the boys about these prices.' And he was obviously very angry at the time.

Q. And then you returned to the office after that?

A. Yes.

Q. Just what happened at that time?

A. I called him then, about 3.30. I was waiting for Mr. Lawson to come in but he didn't return, and I wanted Mr. Heath to hear what was said.

Q. That is Mr. Leo Heath?

A. Yes.

Q. He is a salesman?

A. Yes.

Q. Why did you want him there?

A. I wanted someone else to verify the conversation with Mr. Boothe. So I called Mr. Boothe on the telephone.

Q. You were sure you were speaking to Mr. Boothe?

A. I asked for Mr. Boothe and he came on the line, and I said 'Mr. Boothe?' and he said 'Yes.' And I said 'This is Mrs. Chambers, of Lawson Appliances; I am returning your call.' I said 'I have checked with the boys on the prices which appeared in the paper today on RCA Victor sets and they are in order.' He said 'O.K., if that is the way it is,' and he didn't say any more at that time. I said something about picking up some Lexingtons, and he said 'Your franchise is cancelled.'

Q. Picking up some what?

A. Some Lexington sets, and he said 'Your franchise is cancelled.' I said 'Why, Mr. Boothe?' and he didn't give me any definite answer.

Q. He did not suggest that you were giving up your franchise?

A. He did. We talked on a little further then. He would not commit himself then; I still kept on saying 'Why can't I get my sets?' and he said 'You cancelled your franchise yourself.' And I said 'How do you figure that out?' And he said 'You say in the paper "No, never again".' And I said 'No, we don't say that at all; we say "No, never before or again".' And he said 'You say "Sell out".' And I said 'Yes, it says

"Sell out prices",' and I said 'Therefore we are not canceling our franchise in the paper,' and I said 'We will be able to pick up sets?' And he said 'We will see about that.' And that was about the text of the conversation."

(Evidence, April 21, 1954, pp. 63-66)

Mr. L. R. Heath gave the following evidence with respect to the phone call from the office of Lawson Appliances:

"Q. On March 25 was a telephone call put through from Lawson Appliances to RCA Victor?

A. Yes.

Q. Would you just tell the Commissioner the details of that telephone call, who called and who was called, and what part you had in the telephone conversation?

A. Yes, I shall. Mrs. Chambers called RCA and asked for Mr. Boothe, and Mr. Boothe came on the line finally.

Q. Did Mrs. Chambers say anything to you before she called?

A. Yes, she did. She asked me to listen in on the conversation, as she was a little worried about the results, or something or other, according to some previous call; and I did, I sat down at my own desk and listened to the ensuing conversation. As I say, she asked for Mr. Boothe, and she said to Mr. Boothe, she said 'I have checked on those prices on the ad.,' you see, and she said 'I find that they were --', I don't remember the exact words, but 'they were intended, they were all right, we intended them that way.'

Q. There were no mistakes?

A. There were no mistakes or unintended errors in the ad. at all, on the prices. I am trying to get his exact response on that. It was quite -- how shall I put it? -- well, he was extremely annoyed. He said words to this effect: 'Well, if that is the way it is, Mrs. Chambers, that is all right then.' But I knew that he was not at all pleased with the idea. And then she said, 'I would like -- would it be all right if I come down and pick up sets?' You see, he was going to hang up, at least I gathered he was, at any rate.

Q. Was there no more conversation about that particular ad.?

A. Not about that particular ad. for the moment anyway. And then she said, 'Well, I would like to come down, if I may,

and pick up a few sets for the floor. We need some.' And he said 'Oh, well, you are cut off, you are defranchised', or words to that effect. And she said, 'Well, I thought you said it was all right'. She was as far as I could see, trying to gather information, and she said 'What do you mean, Mr. Boothe?' and then he wandered off on to other tracks, referred to 'your account'. And she said 'What is the matter with the account, Mr. Boothe? It is up to date, and whatever unfinished business there is we can give you a cheque at a moment's notice'. And he blustered through that, and she said 'Do you mean to say you are defranchising us, Mr. Boothe?' And he said 'Well, you have defranchised yourself, you have said that you were throwing the line out, going out of RCA altogether'.

Q. Why did he say that?

A. I don't know exactly, outside of the fact that he apparently didn't want to be bound down on the idea that he was doing the defranchising, as far as I could gather from the conversation. And of course Mrs. Chambers asked him 'In what way?' and he said 'You say it right in the paper'. And she asked him 'Well, where does it say that, Mr. Boothe?' And he said -- this seems, this line seems to play quite a part in this -- 'No, never again', and this comes up again, this 'Never before or again'. They all ignored the 'before'. Of course I can't see anything in it myself but I give it to you for what it is worth, 'No, never again'. And of course Mrs. Chambers, apparently from the ad. -- I don't know if she had it in front of her or not when she was speaking to him -- she said 'No, never before or again'. She said 'Of course, that refers to the price, Mr. Boothe'. And he disagreed with that, and he said 'As far as we are concerned, Mrs. Chambers, you are cut off.' Well, that pretty well is all I can remember of the conversation. I don't think there is anything else, any pertinent fact I can add to that. That pretty well ended it, for all I can remember."

(Evidence, April 21, 1954, pp. 73-76)

In his evidence in regard to the telephone conversations with Mrs. Chambers on March 25, Mr. Boothe said that he did not refer to the price of the deep image model nor to cancellation of the franchise of Lawson Appliances. Giving evidence on April 22, 1954, Mr. Boothe testified:

"Q. I show you Exhibit 6, which is an ad. of Lawson Appliances, which appeared in the Toronto Telegram of March 25, and I ask if you have seen that ad.?

A. MR. BOOTHE: I have; I have a copy of it.

Q. When did you see that ad.?

A. MR. BOOTHE: On the day that it was put in the paper.

Q. And what did you do upon seeing that ad.?

A. MR. BOOTHE: Upon seeing that ad. I inquired as to whether or not the newspaper had made an error in setting up the ad.

Q. Inquired of whom?

A. MR. BOOTHE: Mrs. Chambers, of Lawson Appliances, who is responsible for setting up the ads.

Q. Did you telephone her?

A. MR. BOOTHE: I did.

Q. Just what was the gist of the conversation with Mrs. Chambers?

A. MR. BOOTHE: I asked her whether she had seen her ad. and whether it was correct and whether there was an error in the ad.

Q. What did she say to that?

A. MR. BOOTHE: She said she would have to check.

Q. Did you phone her at the office?

A. MR. BOOTHE: I did not. She was not there -- wait a minute. I called at the office to locate her and she was not there, and then I phoned her at her home.

Q. And then the conversation stopped at that point when she said she would call you after she had checked?

A. MR. BOOTHE: Yes.

Q. That was the end of the conversation at that particular time?

A. MR. BOOTHE: That is right.

Q. At what time of day was that, Mr. Boothe?

- A. MR. BOOTHE: I imagine that would be somewhere around noon.
- Q. Of March 25?
- A. MR. BOOTHE: Yes.
- Q. Did Mrs. Chambers call you?
- A. MR. BOOTHE: Yes.
- Q. Or did you call her?
- A. MR. BOOTHE: No, she called me later.
- Q. What was the gist of that conversation?
- A. MR. BOOTHE: She called to say that she had checked and that the newspaper had not made any mistake, that it was published exactly as prepared.
- Q. And then what happened?
- A. MR. BOOTHE: Then she tried to carry on the conversation further and I told her that I was interested in knowing whether or not an error had occurred, and I wanted to make very sure that, that that was my only interest. She said to me, 'You can't regulate prices at which goods are sold.' And I said 'Mrs. Chambers, you know that and I know that. We cannot set prices at which goods are sold nor dictate prices at which they may be advertised. I have only one interest, and I want to make it very clear, but one, and that is, did an error occur in the ad.?''
- Q. What was your particular interest in the error, if there was an error?
- A. MR. BOOTHE: It is a false ad., and I wanted to confirm what I thought was going on.
- Q. Then what was said from there on?
- A. MR. BOOTHE: She said, 'Then we are still RCA Victor dealers?' I said, 'Yes, you are, but' I said, 'bear in mind one thing, I am not interested in C.O.D. dealers.'
- Q. You actually said that to her?
- A. MR. BOOTHE: I did.

Q. What happened from then?

A. MR. BOOTHE: That is all, They tried to -- she tried to prolong the conversation and though trying to set up a set of circumstances, and I ended it; I said 'Mrs. Chambers, I am not interested in C.O.D. accounts.' -- Oh, one minute. She asked me if we had certain stuff in stock and I said I would have to check the inventory. And then I hung it up. The reason I cut it off is the reason explained to you.

Q. When did you become aware of the C.O.D. accounts, of the fact that they were buying C.O.D.?

A. MR. BOOTHE: On the 22nd or the 23rd of the month.

Q. On the 22nd or 23rd of March?

A. MR. BOOTHE: Yes.

Q. Did you tell Mrs. Chambers on the telephone that her franchise, the franchise of Lawson Appliances, was cancelled?

A. MR. BOOTHE: No, sir, I did not. At no time did I state verbally that her franchise was cancelled, because it cannot be cancelled verbally. And if necessary I can produce two witnesses who were present at my office when she called me."

(Evidence, April 22, 1954, pp. 109-113)

When Mr. Boothe was re-examined on August 17, 1954 in regard to the same telephone conversations he gave the following evidence:

"Q. Now, Mr. Boothe, in your evidence on page 110 you talk about your conversation with Mrs. Chambers. In the first instance the question was:

'Q. Just what was the gist of the conversation with Mrs. Chambers?

A. I asked her whether she had seen her ad. and whether it was correct and whether there was an error in the ad.'

I would like to ask you just what details of the ad. did you direct her attention to at that time as being in error?

A. Specifically to the heading of the ad. as previously testified, 'New deep image, guaranteed console, RCA.' I asked her

was the set-up in the newspaper and [sic] printed as prepared or did the newspaper make a mistake in setting up the ad. That was the specific point of the question.

Q. You did not ask her about the price of the deep image model at that time?

A. I did not.

Q. You did not say anything to her about this method of advertising at the time she called you back? You did not make any mention of that fact then?

A. Pardon?

Q. She called back and said there was no mistake. You made no mention of the fact that this advertising was fictitious and not ethical? You did not make any statement to her at that time?

A. No.

Q. When she called you back what did she say, after she had checked the ad.?

A. She called me and said, 'Mr. Boothe, I have checked the ad. and it is correct in every detail.' To that I said, 'That is all I wanted to know, Mrs. Chambers.'

(Evidence, August 17, 1954, pp. 295-6)

Mr. G. A. Walter, sales manager, Toronto Distribution Division of RCA Victor gave the following evidence respecting Mr. Boothe's telephone conversation on the afternoon of March 25:

"Q. On the afternoon of March 25, 1954, were you in Mr. Boothe's office?

A. I was in Mr. Boothe's office in the company of Mr. Leo Levitt, one of our Toronto dealers, discussing business matters with the dealer in question.

Q. Mr. Levitt was there in connection with his own business?

A. Mr. Levitt was there with Mr. Boothe and myself discussing -

Q. He is a dealer?

A. He is a franchised dealer of our company.

- Q. Will you in your own words just tell the Commission what transpired on that occasion? What time in the afternoon was that?
- A. Well, it was considerably after lunch. I would say 2.30, somewhere in the vicinity of 2.00 to 2.30, or a quarter to three in the afternoon.

We were discussing a business matter when the conversation was interrupted by a phone call which Mr. Boothe answered. First, apparently somebody on the other end of the phone was making some statement and Mr. Boothe then interceded; the first thing to my recollection, his words were, 'No, no, Mrs. Chambers, all I want to know is did the newspaper make a mistake in your ad. today?' That was followed by a pause, presumably there were some remarks on the other end of the telephone conversation and Mr. Boothe spoke again. I believe he said, 'No, Mrs. Chambers, you know and I know that the RCA Victor do not take any exception at the price at which you advertise and sell our products.' He again I believe at that time repeated his question again. 'All I want to know is did the newspaper make an error in your advertisement in today's paper?'

He said I believe also, 'You know and I know that RCA Victor have never -- 'Well, you know and I know that RCA Victor do not say the prices at which you advertise or sell our products. All I want to know is did the newspaper make a mistake in your ad.?''

Then I believe the conversation -- Mrs. Chambers again, I presume, had asked him some question and he replied, 'I don't know, Mrs. Chambers, I will have to check our stock. Furthermore we are not interested in C.O.D. accounts. Good day.' That was the termination of the conversation."

(Evidence, August 17, 1954, pp. 245-6)

Mr. Leo Levitt of Leo Levitt Appliances Limited, Toronto, when examined as to a telephone conversation with Mr. Boothe on March 25, 1954 gave the following evidence:

- "Q. Were you in Mr. Boothe's office on March 25, 1954?
- A. I was.
- Q. What time of day was that?

- A. It was after lunch. I cannot tell you -- it was shortly after -- perhaps 2.00 o'clock.
- Q. Will you in your own words tell the Commission what transpired on that occasion as far as you can do so?
- A. I was in the office, in Mr. Boothe's office with Mr. Walter discussing business of ours, of mine. The telephone rang and Mr. Boothe answered the telephone. Then he made reference to, he said 'Did the newspaper make a mistake?' I believe he repeated that.

Then there was some more conversation on the other end of the line. Then he said that the RCA Victor Company could not legally dictate any price to any dealer, any price he could advertise in any way. Then I believe he went back and asked again if the newspaper had made a mistake in the layout of the ad. I believe that is all I remember.

No, there was something about -- the person on the other end must have asked him if there was anything in stock, something in stock, because he said he would have to check it and let them know.

- Q. On page 25 of the transcript Mrs. Chambers testified in respect to that conversation that Mr. Boothe said, 'Your franchise is cancelled.'
- A. He did not say that.
- Q. Have you any comment on that?
- A. He did not use the word 'franchise' at any time that I sat there."

(Evidence, August 17, 1954, pp. 263-4)

3. Cancellation of RCA Victor Television Franchise of Lawson Appliances.

Under date of March 26, 1954, Mr. L. W. Boothe wrote to Lawson Appliances as follows:

"This is to inform you that your RCA Victor Television franchise has been cancelled under the general terms of said agreement, effective immediately.

Our representative will call on you Monday to arrange for the

return of any current models you may have on hand."

(Exhibit 7)

On April 7, 1954, Mr. Boothe sent a registered letter to Lawson Appliances reading as follows:

"Further to our letter of March 26th, giving you notice of termination of your RCA Victor Television Franchise, it is understood that the effective date is 30 days from date of notice of such termination, as provided for in paragraph nine (9) of said agreement."

(Exhibit 8)

In the meantime, Mr. R. G. Powers, salesman, RCA Victor, had visited Lawson Appliances on Tuesday, March 30, and inquired about the return of RCA Victor sets to the manufacturer. When Mr. Lawson indicated that he did not know precisely what sets he had in stock unsold Mr. Powers did not pursue the matter of returning RCA Victor products.

In his evidence given on April 22 and August 17, 1954, Mr. Boothe referred to several factors which, he stated, led him to take the decision to secure the termination of the franchise of Lawson Appliances. When asked to summarize the reasons for his action during his examination on April 22, Mr. Boothe testified as follows:

- "Q. I am not sure if for the purposes of the record there was any clear statement made by you as to the actual reason why you took the action you did in giving notice of termination of the franchise to Lawson Appliances.
- A. Well, I am afraid of that account, I don't like the operation and I am afraid of it. That is the reason why we cancelled that franchise agreement. You have there, first of all, bad advertising, and he is overdue with us, and --
- Q. Perhaps we had better clear that up. The examples of advertising you produced were subsequent to the date of your action.
- A. Oh, no, sir. I have put in some since in addition, but the first ad. of March 25 is bad.
- Q. But your action followed almost immediately on that advertisement.
- A. That is right.
- Q. So unless you have some other remarks to make it does not

indicate any prior policy of that nature?

- A. Well, it has been done. He has been advertising in this fashion, in great volume too; and, as I say, he is perpetually overdue."

(Evidence, April 22, 1954. pp. 158-9)

Mr. Boothe's appraisal of the advertising by Lawson Appliances of RCA Victor television sets is indicated by the following extract from his evidence:

- "A. MR. BOOTHE: Then might I point out here at this point, might I point out something which I think is very necessary, because of the route which this has taken? We spend a lot of money advertising deep image television receivers, and deep image television is something that we are trying to establish strongly, we are advertising strongly.

MR. MARPOLE: Would it be as well to explain what a deep image receiver is?

MR. BOOTHE: A deep image receiver differs entirely from a standard receiver, inasmuch as it has an aluminised tube and a special dark filter safety glass. It gives a deeper, better, darker picture. It is a highly desirable product and it is new.

BY MR. WENTZELL:

- Q. Is that deep image picture exclusive to RCA Victor?

- A. MR. BOOTHE: The term is.

- Q. Have other sets got a comparable deep image, whether it is called deep image or something else?

- A. MR. BOOTHE: Yes, some other sets have. General Electric have, but only approximately. Here [referring to Exhibit 6] 'New Deep Image Guaranteed Console Models RCA' is the heading on that ad. Illustrated are two models that are not deep image models. There is one model which is a deep image model shown as an illustration in that ad. The other two are not deep image receivers. There is a further statement that this model (indicating) -- the inference is and the statement is that it is deep image.

BY COMMISSIONER WHITELEY:

- Q. If it has a name you had better identify it.

- A. MR. BOOTHE: The Powell model is not a deep image model. And the further statement is made 'Brand New 1954 Lawson Only', and it is available from other dealers and from the RCA Company in Toronto. That is misleading to the nth degree and is not ethical. That is a misleading statement, designed -- I will keep quiet -- it is definitely misleading."

(Evidence, April 22, 1954, pp. 113-15)

In a review of further evidence given on April 22 and with reference to other advertisements of Lawson Appliances, Mr. Boothe testified as follows on August 17:

- "Q. Then at page 162 of the transcript you make a statement there in a fairly lengthy answer, the gist of which is that Lawson's were selling someone else's merchandise and not that of RCA Victor; that he was advertising that way and running overdue. Then on the next page you refer to the volume of advertising he was doing, and you say:

'When I refer to this volume of advertising I mean this amount that related to television, the frequency and the extent. Any ad. like that run regularly by anybody else in town would produce far more volume than this man was doing.'

You are there speaking of the volume of RCA Victor business he was developing?

- A. That is correct.
- Q. Will you please produce as Exhibit No. H-3 -- here again I have only a photostatic copy, Mr. Chairman -- a sheet from the Toronto Daily Star of Tuesday, March 18, 1954? Do the statements I have just referred you to have any connection with the advertisement which appears on that page, on the right-hand side, where Lawson's advertisement appears?
- A. In this ad. which appeared on the 18th he is advertising the product of a competitor, a console model at \$299, formerly \$429, and 'carload purchase to clear now.' So that the week previous we noticed that he had stated in the public print that he had purchased a carload lot of a competitive make of receiver.

EXHIBIT No. H-3 -- Advertisement, Toronto
Daily Star, March 18, 1954.

BY MR. O'DONNELL:

Q. That is the week previous to March 25?

A. The week before. The space devoted to the merchandising or selling of that carload lot was much smaller than that devoted to the sale of our products, of which he has bought 26 [x] up to that time.

Q. 26 from the beginning of the year?

A. From the beginning of the year. Presumably he had sold some, so that he could not possibly have had a large quantity on hand when the ad. of the 25th appeared, and yet a much larger space was devoted to the advertising of our product on that date and very little with respect to the advertising of the carload lot a week previous.

Q. In the light of your experience, what did that indicate to you?

A. One thing was that he was using our line to sell, to attract trade and to dispose of a large quantity of another make of merchandise. That was my appraisal as I have previously stated.

Q. In view of the fact that of the four sets which are set out on Exhibit No. 6 he had purchased only 26 in all?

A. That is correct.

Q. That is the total aggregate purchases of the four different models or sets had been 26 sets only from the beginning of the year?

A. That is correct.

Q. Those were what his advertisement indicates he is dumping large quantities, and he had 26 from the beginning of the year?

A. That is correct.

Q. And the week before he purchased a carload, according to the advertisement, of a competitor's product -- I do not want to put the name on the record, but it is on the face of the ad?

A. (No audible answer).

[x] The invoices contained in Exhibit 44 show, with respect to the four models illustrated in the advertisement of March 25, the purchase of a total of 13 sets from the beginning of the year and a total of 19 sets during the entire period from November to March.

- Q. Incidentally, in respect to the Powell model here of which he had purchased two from the beginning of the year 1954, and which he advertised for sale at \$269 and set out the list price as \$469.50, can you tell the Commission what the cost to Lawson of that was, what the sale price by RCA Victor to Lawson was?
- A. It was \$307.76. That was the price he paid for the two sets in question, \$307.76 apiece.

MR. O'DONNELL: For the convenience of the Commission that appears in Exhibit No. 44 on the page coded RCV-54.

THE WITNESS: That I believe was the number stamped on by the Commission.

MR. O'DONNELL: I am referring to the mark at the top of the page.

BY MR. O'DONNELL:

- Q. The two Powell' sets that you have spoken of are invoiced there at \$307.76?
- A. That is right.
- Q. Having purchased two he advertised them on March 25 under this heading 'Just dumping television,' and those sets he was selling at considerably below the cost price?
- A. That is correct.
- Q. Having only two of them. You were of the view that he obviously was not through his advertising trying to sell your merchandise but rather to sell the merchandise of a competitor, a carload of which he advertised having bought the week before?
- A. That is correct. I believe he even went so far as to state that those models were available only at his establishment, which was wrong because we had them stocked as well at the same time.
- Q. That is another point, yes. In the advertisement appear the words 'Brand new, 1954, Lawson's only'?
- A. Correct.
- Q. Were sets like that available to other dealers in Toronto?

A. They were. We had them in stock and other dealers had them in stock at the same time.

Q. So that the insinuation or statement that they were at Lawson's only is incorrect?

A. Is incorrect.

Q. A further thing about this advertisement is that they advertise new deep image guaranteed console models, RCA. How many of those four were deep image console models?

A. Only one.

Q. Which one?

A. The Lexington, on the right-hand [sic] side, and it is so designated.

Q. The door of the second one is closed. The third one has an image face on it; the fourth has a face?

A. Yes.

Q. And over the whole are the words 'Deep image, guaranteed console models'?

A. Yes.

Q. You considered that misleading?

A. Definitely.

Q. And that the other statement also is incorrect?

A. Right."

(Evidence, August 17, 1954, pp. 283-88)

Mr. Boothe stated in his evidence that deep image models had been introduced by RCA Victor in January, 1954 (Evidence, August 17, 1954, p. 282).

In regard to his concern over the volume of business in RCA Victor products done by Lawson Appliances and its credit standing, Mr. Boothe gave the following evidence at one point:

"A. MR. BOOTHE: Frankly, I am very afraid of the account. You have a set of conditions here that are bad. Whenever they have been encountered together they have meant disaster, believe me.

Q. Have you been watching this account very closely?

A. MR. BOOTHE: I watch all accounts that operate, every account, their method of operation; I have to. I have to know where the heck I am going. We have got too much at stake.

Q. How frequently did you inquire about these accounts, how they are doing?

A. MR. BOOTHE: I would get it once a month, and I look over things daily. The salesmen report to the Sales Manager daily, and tab sheets come through monthly giving me purchases for that month.

Q. Were there any detrimental reports about Lawson Appliances on those tab sheets?

A. MR. BOOTHE: They are only records of sales.

Q. Have any salesmen made any detrimental reports about Lawson Appliances?

A. MR. BOOTHE: What do you mean by detrimental?

Q. Well, such as being a poor credit risk or poor credit account, unreliable account?

A. MR. BOOTHE: Do you mean why did I come to this conclusion? Well, I will tell you why. First of all, we have an account that is a low volume account; it is not a high volume account.

Q. How long has it been opened? I should think you should allow a company enough time to get established.

A. MR. BOOTHE: Not with this type of advertising. This is a 24-hour advertising, this is over a week-end. You don't have to take a month to become familiar with this type of thing. They have been in business since August, they have been regular advertisers.

Q. Since when?

A. MR. BOOTHE: Since October, Harry said, I remember.

Q. Actually the record is December 29, 1953, that they went into business.

A. MR. BOOTHE: All right.

MR. MARPOLE: I was going by the correspondence.

MR. BOOTHE: All right. They have been steady advertisers, they have been in the paper, and they have been continually overdue.

BY MR. WENTZELL:

Q. That is to you people?

A. MR. BOOTHE: Yes. I don't know what they owe to other people; that is no easier on us. They have been continually overdue. They have been advertising and have not been selling in volume. When you get high advertising expenditure, overdue, low gross -

Q. How much overdue were they?

A. MR. BOOTHE: They are overdue. How much is a person pregnant? There is no such thing as how much in a case like that.

Q. You might have a practice of having your bills so-called due on the 10th of each month, but does every account come in on the 10th of each month or do some go over a little? In other words, if an account were two days over the 10th it would be overdue, but it would not be a serious thing. What I mean is, was this overdue condition of a serious nature?

A. MR. BOOTHE: Well, serious enough that we could not sell him. There is nothing more serious in business than when you cannot sell a dealer. If I can't sell, I can't produce sales, which is my job. This was October 29 -- no December 29. Nowever, it doesn't matter.

Q. I am going by the franchise, which is dated December 29.

A. MR. BOOTHE: That may be; but the account was opened on October 29, and at the end of the month he owed \$2,740.12, which was paid on January 8.

Q. For the sake of the record you might say what you are quoting from?

A. MR. BOOTHE: It is a resumé from C. A. Noreus re Lawson Appliances, and this is information which I asked him to have prepared.

Q. What is the date of the memorandum?

A. MR. BOOTHE: The date of the memorandum is April 6. He has been overdue since then.

Q. Since when, since November 1953?

A. MR. BOOTHE: Yes, since November.

BY COMMISSIONER WHITELEY

Q. Is your statement to the effect that at no time had Lawson met the terms of purchase?

A. MR. BOOTHE: In essence, yes. On January 11th, 14th, 19th and 21st and January 26th and January 27th his purchases were on a C.O.D. basis because his account was beyond the credit limit and overdue. We continued to sell him C.O.D. on February 1st, because payment had not been received. On February 2nd his account to the end of January was paid.

BY MR. WENTZELL

Q. On February 2?

A. MR. BOOTHE: Yes.

Q. And he had until the 10th to pay that?

A. MR. BOOTHE: No, a portion of it. But his account was overdue and we were selling him C.O.D. at the time, but in January he paid back the account and the overdue. On March 12 we again shipped him C.O.D. because his account was too high. He owed us at that time \$4, 109.49 and had not paid."

(Evidence, April 22, 1954, pp. 117-21)

There appear to be two factors involved in the credit standing of a customer of RCA Victor. In the first place would be the volume of purchases in any month in relation to the credit limit which had been established. In the case of Lawson Appliances, the credit limit had been set at \$5,000 or \$4,000 and when this limit was reached in any month no further purchases could be made except, perhaps, on a C.O.D. basis. The other factor is the time of payment of an account in relation to the terms established by RCA Victor, namely, payment by 10th month following. Mr. Lawson stated that his firm customarily paid its accounts at the end of the following month and that this practice had been accepted by RCA Victor. His evidence in this regard was as follows:

"Q. How have your payments been as far as RCA Victor are

concerned, your invoice payments, have they been prompt?

A. Very good. There was one delay. We pay at the end of the following month to every company and they all find that very satisfactory, they all know we pay at that time.

Q. You gather together your invoices for a particular month?

A. Yes, and pay at the end of the next month.

Q. That was a part of your agreement with RCA Victor, the terms of payment?

A. Yes. They accepted it, we have always done it that way. In one month, in February, we changed bookkeepers and it was a week or so late, and they were advised of it and it was all right. We were working with Mr. Noreus, the Credit Manager for RCA Victor, and he knew it was late because the bookkeeper could not get the account done."

(Evidence, April 21, 1954, pp. 52-53)

It is in evidence that Lawson Appliances ordered certain goods from RCA Victor after March 25, 1954, but the orders were not filled. The failure to fill the orders, it was indicated by Mr. Boothe, was not due to the notice of termination of the franchise agreement but to the fact that under the company's credit policy goods could not be furnished to Lawson Appliances because the account was overdue. A copy of an order telephoned to RCA Victor by Lawson Appliances on March 29, 1954 is in evidence. This order which totalled \$2,209.85 has the following undated notation:

"Cr. limit \$4,000.
Bal. of Feb. a/c 1256.92
overdue
Must be pd before credit granted.

N."

(Exhibit 14)

An internal company memorandum of April 7, 1954 from A. Walter to Gabriel Miller and reply also refer to the credit position of Lawson Appliances and read as follows:

"Please advise what Lawsons credit situation is today.
Could we O.K. shipment today of part of an order?"

"To Mr. A. Walter

From G. Miller

The account outstanding as of April 7/54 is as follows:

Feb: 1211.44
March: 1965.75
Total: 3177.19

As the February portion is now overdue, we cannot make any further shipments (not even C.O.D.) unless a cheque for \$1211.44 is received.

G. Miller."

(Exhibit 15)

On March 25, 1954, the following letter had been sent from the Credit Section, Toronto Distribution Division, RCA Victor to Lawson Appliances:

"During our telephone conversation of March 22nd you promised to mail us a cheque for \$2,500.00 the following day to apply on your February account.

This has not been done, instead we received a cheque in the amount of \$971.88 covering March C.O.D. purchases.

Will you please contact us immediately."

(Exhibit 13)

Mr. Boothe explained the reference to March C.O.D. purchases by stating that a mistake had been made by the shipper in not getting payment at the time the order was delivered (Evidence, April 22, 1954, p. 117).

On the general situation with respect to the credit limit established for Lawson Appliances, Mr. R. G. Powers testified as follows:

"Q. When did you become aware of Mr. Lawson's credit status?

A. When I came to the territory in January.

Q. At that time how long had Lawson been a dealer?

A. Well, I cannot say. It was late last year, sometime before I came to the territory; the exact date I do not know.

Q. Would it not be the fact that he was a new account that would raise some normal doubts as to his credit standing?

A. No. He was told that this account was only to be extended to \$5,000 in any one month or until it was paid. Beyond that it

was to be C.O.D. That is not a normal situation even with new accounts.

Q. What would be a normal situation with new accounts?

A. A normal situation is to have credit of perhaps \$25,000 for an account of that size, which would amount to the maximum that a dealer would ever want to buy in a month.

Q. Were you made aware of the fact that Mr. Lawson would not supply any credit statements and that was why his credit was low?

A. No, I was not aware that he had not supplied any credit statement.

Q. You were just following instructions from Mr. Noreus?

A. Yes.

Q. On the basis of your dealings with Mr. Lawson were those conclusions more or less normal, that he be limited to \$5,000?

A. Yes, it appeared proper to me."

(Evidence, April 22, 1954, pp. 180-81)

Some evidence as to the credit standing of Lawson Appliances as reported by other suppliers was given in the form of "Trade Clearing Reports" for February 18 and March 5, 1954 (Exhibit 39). These reports apparently consist of confidential information with respect to Lawson Appliances, circulated on a reciprocal basis as to the amount of credit outstanding and experience as to payment on the part of individual suppliers, whose identity is not disclosed in the report which is furnished. Between February 18 and March 5, the dates of the two reports, an increase was shown in the total amount owing all suppliers listed and in the total amount shown as overdue. There was also greater indication of slow payment in the later statement. Notations have been made in this exhibit indicating the listings of the account of Lawson Appliances with RCA Victor and in the reports for both February 18 and March 5 no amounts are shown as overdue and the comments as to "Manner of Paying" are "Fair" in both reports. The range of comments in these reports from all suppliers run "Prompt", "Good", "Fair", "Slow", "V. slow."

CHAPTER V

CONCLUSIONS

The matter in question in this inquiry is the action of RCA Victor Company, Ltd. in cancelling the franchise for television sets of one dealer among approximately 100 franchised dealers in the city of Toronto dealing in the company's products and whether the reason for that action related to the practice of resale price maintenance as defined in the Combines Investigation Act.

The allegations made against RCA Victor and its officials and employees in the Statement of Evidence presented by the Director of Investigation and Research fall into two parts. In the one part, it is alleged that in the circumstances the action of RCA Victor in circulating lists of suggested prices was an attempt to require or induce Lawson Appliances to resell television receiving sets and accessories at a price not less than a price or a minimum price specified by RCA Victor. In substance, the other part of the allegations is that RCA Victor refused to sell or supply television sets or television accessories to Lawson Appliances for the reason that Lawson Appliances had resold or offered to resell RCA Victor television sets and accessories at a price less than a price or minimum price specified by RCA Victor. On this basis this part of the allegations may be taken to include both the notice of cancellation of the franchise of Lawson and the failure to fill orders placed by Lawson Appliances with RCA Victor after March 25, 1954. It is contended on behalf of RCA Victor that Lawson Appliances could have made purchases at any time up to 30 days from March 26, 1954 as provided for under the franchise agreement if the express conditions of payment required by the company had been met. It is in evidence that prior to March 25, 1954 sales had been made by RCA Victor to Lawson Appliances, sometimes on account and sometimes C.O.D. when the express conditions of payment had not been met and that after March 25, 1954 no orders were shipped even on a C.O.D. basis. In the Commission's view, it is unnecessary to express an opinion as to the reasons which led RCA Victor to withhold the filling of orders placed by Lawson Appliances after March 26, 1954. The action of Mr. L. W. Boothe, as manager of the Toronto Distribution Division of RCA Victor, in taking steps on March 26 to cancel the franchise of Lawson Appliances constituted, in the Commission's view, a refusal to sell or supply television sets and accessories to Lawson Appliances. Whether the refusal would take effect immediately or after a lapse of 30 days the Commission does not regard as material in considering the two general phases of the allegations. The crux of the action was the decision to terminate the franchise agreement

with Lawson Appliances as soon as this could be done.

The first phase of the allegations, as state above, involves the less conflicting evidence and may be considered first. The evidence as a whole leads to the conclusion that neither RCA Victor nor any of its officials or employees made any attempt to require or induce its dealers, including Lawson Appliances, to resell television sets and accessories at the prices or at not less than the prices contained in its suggested price list. There is the evidence of Mr. F. W. Radcliffe, vice-president in charge of distribution, that on the passage of the amendment to the Combines Investigation Act forbidding resale price maintenance all the district managers of the company were advised that resale price maintenance had been made illegal and that the company would strictly observe the law. The district managers, in turn, held meetings with territory representatives and salesmen who were instructed as to the requirements of the new law and as to company policy in observing it. Then in November, 1953, Mr. Radcliffe wrote a letter to all district managers to clarify and re-emphasize company policy in the observance of the law. In that letter Mr. Radcliffe wrote:

"I wish you would tell all our Sales Representatives and anyone else who might have cause to discuss with dealers the matter of Franchises, that under no circumstances, at any time, must we discuss adherence to or deviation from our suggested list prices on our products. It is against the law and it will be considered in a very serious light if any man should make this statement, either personally or on behalf of the Company. Just avoid all such conversations or communications in writing entirely."

(Exhibit 16)

It is in evidence that Mr. Radcliffe's letter was brought to the attention of the sales staff of the Toronto Distribution Branch of the company.

The evidence as to advertised prices of RCA Victor television sets supports the evidence as to company policy. All persons who appeared as witnesses and were questioned on the point testified that RCA Victor television sets were frequently advertised at prices less than those contained in the suggested price lists issued by the company. Mr. A. D. Lawson and Mr. L. R. Heath gave evidence to the effect that in the period prior to March 25, 1954 many of their competitors had advertised RCA Victor sets at prices substantially lower than the suggested prices of the company and, in the case of certain models, at prices lower than Lawson Appliances could ever hope to cut its prices on the same models. On the basis of this

evidence it must be concluded that RCA Victor was genuinely anxious to observe the law forbidding resale price maintenance and made it a matter of company policy to instruct all company personnel engaged in sales matters as to the standard of careful observance which it wanted to have followed. Furthermore, in the particular case of Lawson Appliances, it does not appear that any attempt has been made, either by the head office of the company or by the Toronto representatives, to induce this distributor to maintain given resale prices. Although Lawson Appliances had, previous to March 25, 1954, advertised RCA Victor television receivers at prices lower than those mentioned in the suggested price list, it does not appear that they were criticized in any way for such advertisements by the company, or that any suggestion was ever made by a representative of the company that they should, in future, refrain from advertising reduced prices and keep the advertised prices in line with those stated in the suggested price list. In the Statement of Evidence the Director of Investigation and Research had made clear that allegations were not based on any actions taken as a result of the general sales policy of RCA Victor.

The second phase of the allegations, revolving about the decision to cancel the franchise of Lawson Appliances by RCA Victor, embraces a much more complex situation. It is clear that the action taken by Mr. L. W. Boothe as manager of the Toronto Distribution Division of RCA Victor, arose out of the advertisement of Lawson Appliances on March 25, 1954. The main elements of that advertisement, in so far as it related to RCA Victor products, may be noted as follows:

1. The advertisement announced an anniversary sale with big values.
2. The advertisement carried a heading "New 'DEEP IMAGE' Guaranteed Console Models RCA" and illustrated four models of which three were console models and one was not. Of the three console models illustrated one had the notice "Deep Image Picture" in the picture part of the illustration.
3. The advertisement stated "Lawson Are Just Dumping Television. These Are Not Usual Deal Prices - They Are Anniversary Sell-Out Prices."
4. The advertised selling prices for the four models were substantially lower than the regular prices shown for the same models.
5. In the case of one of the models illustrated in the advertisement the selling price advertised was below the price at which such a set had been sold to Lawson Appliances by RCA Victor and in the case of the other

three sets the selling prices advertised were about 1, 5 and 8 per cent above cost.

6. In the case of two models the selling prices were preceded by the word "Lawson's" and in the case of the other two models the preceding words were "Lawson's Only."

Mr. L. W. Boothe stated in evidence that the advertisement of Lawson Appliances on March 25, 1954 was, in his words, "the straw" which confirmed his opinion that dealings of RCA Victor with Lawson Appliances were heading for trouble (Evidence, April 22, 1954, p. 168, August 17, 1954, p. 297). Mr. Boothe said in his evidence that it was the conjunction of a set of conditions which he considered present in the dealings of RCA Victor with Lawson Appliances which led him to decide that the franchise should be terminated. The set of conditions he described as (1) extensive advertising of RCA Victor television sets with small volume of sales of such products (Evidence, April 22, 1954, pp. 118, 161-2); (2) continually overdue account (Evidence, April 22, 1954, pp. 119-121, 159, 162, 168, August 17, 1954, p. 283). Mr. Boothe said that his opinion based on the set of conditions was supported by the advertisement of March 25 (Evidence, August 17, 1954, p. 297). He regarded the advertisement as misleading first because the heading stated "New Deep Image Guaranteed Console Models RCA", whereas of the three console models illustrated in the advertisement only one was a "deep image" model in the company's description. Although the one "deep image" model was so identified by having the words "deep image picture" on the fact of the illustration, Mr. Boothe stated that the heading referred to above would carry the inference that the other two models were to be taken as "deep image" sets also. Secondly, Mr. Boothe said that he regarded the use of the words "Lawson's Only" preceding the sales prices of two sets in the advertisement misleading because of the inference that the particular models were available at Lawson's only, whereas RCA Victor had a supply of these sets and they were also in stock at the time at other dealers in Toronto (Evidence, April 22, 1954, pp. 114-5, August 17, 1954, pp. 287-8).

Furthermore, in Mr. Boothe's opinion, the volume of sales of RCA Victor television sets by Lawson Appliances was not in relation to the scale of advertising, and he concluded either that RCA Victor products were being featured to draw customers to the store in order to dispose of goods of other manufacturers, or that there was, in his words, "trouble ahead" from the viewpoint of meeting accounts as they became due (Evidence, April 22, 1954, p. 162, August 17, 1954, p. 285). In support of the first position, the Commission was referred to an advertisement on March 18, 1954 (Exhibit H-3), in which Lawson Appliances had announced clearance of a carload purchase of television sets from another manufacturer and had devoted considerably less space in the advertisement to the carload sale than

that given to the RCA Victor sets in the advertisement of March 25, of which, however, only 19 are shown to have been bought in a period of almost five months.

It is clear from the evidence that, as soon as Mr. Boothe satisfied himself that the advertisements of Lawson Appliances on March 25 were in the form intended, he lost no time in seeking to end opportunity for Lawson Appliances to deal in RCA Victor television sets. His letter of March 26 to Lawson Appliances (Exhibit 7) stated that the television franchise of Lawson Appliances was being cancelled "effective immediately", and that a company representative would call on the first business day in the following week "to arrange for the return of any current models you may have on hand". The evidence establishes that in a further letter from Mr. Boothe, dated April 7, Lawson Appliances were informed that the effective date of cancellation of the franchise would be 30 days from the date of the first letter of March 26. It also appears that, apart from inquiry whether Lawson Appliances was in a position to return RCA Victor television sets, no effort was made to have such sets returned. These subsequent actions, however, serve, in one respect, to indicate that the decision made by Mr. Boothe in regard to Lawson Appliances was an abrupt one and that the initiating impulse in the decision was his reaction to the advertisements of March 25. This is admitted by Mr. Boothe in his evidence, but he states that his appraisal of the advertisements served to confirm a view which he had already formed and led him to decide that the time to act had been reached.

Whatever may have been the circumstances as to the credit position of Lawson Appliances on its RCA Victor accounts, it does not appear to have been such as to require any abrupt decision. There is the evidence of Mr. Lawson that he believed the way he was meeting the accounts met with the approval of the credit department of RCA Victor. There is also the letter of March 10, 1954, from the credit manager, Toronto Distribution Division, RCA Victor, (Exhibit 9) congratulating Lawson Appliances on the results shown in the financial statement for the year ending December 31, 1953. Then there are the trade clearing reports (Exhibit 39) in which payments by Lawson Appliances are indicated as "Fair" and no overdue amounts are indicated in respect of those listings identified as relating to RCA Victor accounts with Lawson Appliances. On the other hand, there is the evidence of Mr. Boothe that he did not regard such credit reports as conclusive in the face of other indications affecting the handling of RCA Victor television sets by Lawson Appliances and the letter of March 25, 1954, from RCA Victor to Lawson Appliances (Exhibit 13) indicating that payment promised on the February account had not been made.

The evidence in regard to the volume of business done by Lawson Appliances in RCA Victor television sets is also inconclusive from the point of view of indicating any situation which might have justified an abrupt decision to cancel a franchise. There is nothing in

the evidence to show that the general nature or scale of the advertising done by Lawson Appliances changed after it became an RCA Victor franchise dealer. The credit recommendation of October 26, 1953 (Exhibit 31) forecast a potential annual sales volume of \$50,000, and the monthly credit limit of \$4,000 or \$5,000 which was set appears to bear out the view that this volume of sales was all that had been expected from Lawson Appliances. It is true that the memorandum of the sales representative which accompanied the credit recommendation described Lawson Appliances as "a potential 10 sets per week" but this could not have been an immediate anticipation as otherwise the annual volume forecast would have been considerably higher.

This brings us to the advertisements of March 25 which were the immediate cause of the cancellation of the franchise. The principal features of the advertisements relating to RCA Victor television sets have already been described in detail. They may be summarized as follows:

1. Headlining new "deep image" guaranteed console models RCA.
2. Banner line "Lawson are just dumping television."
3. Featuring of three console models and one mantel model, only one of which was "deep image."
4. Sale price of all sets at very low levels, in one instance, at least, below Lawson's cost.
5. The use of the words "Lawson's only."

As the last-mentioned feature appears to be the least significant, reference may first be made to it. Very similar wording had been used by Lawson Appliances in a previous advertisement of RCA Victor television sets (Exhibit H-2) and there is no evidence of any exception being taken to it on the part of RCA Victor. While it is possible that it might be construed by newspaper readers in the manner suggested on behalf of the company, namely, that only at Lawson Appliances were the products so described available, the wording might more readily be taken that at Lawson Appliances the price was only as much as shown.

There can be no question that the featuring of RCA Victor television sets at prices near cost or with a relatively small margin over cost would be of interest to officials of RCA Victor and to the trade generally. The evidence is clear, however, that RCA Victor sets had been advertised previously by Lawson Appliances and by other Toronto dealers at prices which might be regarded as similarly low and there is no indication in the evidence of any action on the part of RCA Victor. It is the case that no instance is shown in the evidence of the advertisement of a "deep image" model at a low price but it is also

the case that such models had not been introduced until January, 1954 (Evidence, August 17, 1954, p. 282). In her evidence, Mrs. Chambers said that, when Mr. Boothe called her by telephone on March 25, he asked about the price on the deep image set advertised in the paper (Evidence, April 21, 1954, p. 64). On the other hand, Mr. Boothe testified that when he telephoned to Mrs. Chambers he asked whether the advertisement was correct and whether there was an error in it but did not ask about the prices as such (Evidence, April 22, 1954, p. 110, August 17, 1954, p. 295). The evidence of Mrs. Chambers and Mr. Boothe is in direct contradiction as to whether the advertised price of the "deep image" model was the matter raised by Mr. Boothe in his first telephone call to Mrs. Chambers on March 25 and the evidence as to the later telephone conversation on the same day does not establish conclusively what matters may have been discussed during the first call.

The evidence of Mr. Boothe and Mrs. Chambers agrees on the point that Mr. Boothe made reference to the status of the account of Lawson Appliances during the second telephone conversation although Mrs. Chambers, in her evidence, did not make specific reference to comment by Mr. Boothe that he was not interested in C.O.D. accounts. It may be accepted that on March 25 Mr. Boothe was aware of the position of the account of Lawson Appliances and would know that, under normal company procedure, Lawson Appliances would not be able immediately to secure on a credit basis, further supplies of the RCA Victor sets featured in the advertisement. In his evidence, Mr. Boothe stated that he had become aware on March 22 or 23 that Lawson Appliances were buying from RCA Victor on a C.O.D. basis (Evidence, April 22, 1954, p. 112). Mr. Boothe could also be expected to have knowledge of the general scale of purchases of RCA Victor products made by Lawson Appliances and to know in a general way whether Lawson Appliances would be likely to have substantial quantities of the sets featured in the advertisements of March 25. Whether during the day he had informed himself in any detailed way of the actual purchases made by Lawson Appliances prior to March 25 is not in evidence, but presumably it would have been possible for him to have done so.

Invoices covering deliveries of television sets to Lawson Appliances by RCA Victor from November, 1953 to March, 1954, both inclusive, were included in Exhibit 44. These show the following quantities of the four sets featured in the advertisements of March 25, 1954 sold to Lawson Appliances by RCA Victor prior to the latter date:

Model	Number of Sets Delivered					
	Nov.	Dec.	Jan.	Feb.	March	Total
Cumberland				1		1
Lexington				2	8	10
Linton	4	1				5
Powell	1			2		3

The advertisements of March 25 of Lawson Appliances do not indicate in any way what quantities of the several sets were included in the sale. There was no suggestion, in the case of any RCA Victor model advertised, that the number of sets included in the sale might be limited to one or two. In fact, the headlines in the advertisement might be taken as suggesting that significant quantities were available for the sale.

We do not feel that we should reject Mr. Boothe's evidence that the effects of the featuring of RCA Victor television sets by a dealer who held very limited stocks and who, therefore, could not be expected to meet on the advertised basis the demand which such advertisements should bring forth and the grouping of "deep image" sets and earlier type models in a manner which could be misleading to the public were regarded so seriously by him as to lead him to the decision, on the basis of his experience, to take steps to terminate the franchise of Lawson Appliances. There may well be question whether Mr. Boothe's concern would have resulted in his immediate decision to secure cancellation of the franchise of Lawson Appliances if the advertisements had not featured a greatly reduced price for the new "deep image" set. Mr. Boothe denies that the offering of the Lexington model at a low price was the reason why he gave notice of the termination of the franchise of Lawson Appliances, and in the absence of any evidence in the inquiry showing any action by RCA Victor and by its Toronto Distribution Division, in particular, to maintain or endeavour to maintain resale prices we do not feel that the reasons given by Mr. Boothe for his action should be regarded as implausible. In circumstances, such as those disclosed in this case, the reasons leading to action terminating a franchise would tend to shade into each other and slightly different emphasis on one aspect rather than another might tend to establish that the question of the maintenance of resale prices was a principal factor in the decision. We do not feel that the evidence before the Commission in this inquiry should be so construed. If the decision to discontinue supplies had been made because of the action of the dealer in advertising reduced prices it would be expected that efforts to secure the maintenance of suggested retail prices or to prevent offerings at less than such prices would not have only an isolated expression even though drastic steps might be taken rarely. In the present case, the evidence as a whole points to positive attempts on the part of the manufacturer to see that the requirements of the law with respect to resale prices are fully observed by its officials and employees. The instances of price reductions referred to by witnesses and shown by the examples of advertisements contained among the exhibits support the submissions on behalf of the company that its policy was, in fact, carried out in its dealings with retailers. At the same time, we think that it would be preferable in cases when suppliers are considering the termination of franchise arrangements with a dealer that some notice should be given of the possible action so that a dealer could endeavour to meet the requirements of the dealership if he desired to and was able to do so. It was stated by Mr. Boothe in his

evidence that the decision to terminate the franchise of Lawson Appliances, although precipitate in the final step was the result of what was regarded as failure during some time to meet the standards expected of a dealer in RCA Victor products. We would expect that this would normally be the case and that it would be the usual practice for a supplier to bring to the attention of a dealer any deficiencies or objectionable features which the manufacturer found in the representation of his products before taking the drastic step of abruptly terminating a franchise without giving any prior indication that such action might be taken. A procedure of this kind would not only serve to keep before the dealer at all times those standards of dealership which the manufacturer regarded of prime importance, but would tend to make less likely question arising as to the reason for action if it became necessary to terminate a franchise.

Although the question was not raised in the course of argument, the Commission has been concerned by the fact that immediate and final cancellation of the franchise was decided upon by the company officials in Toronto, in part, as the sanction or penalty for alleged unethical advertising. The statement of policy of the company with respect to "co-operative advertising", issued under date of January 1, 1954, was filed as Exhibit H-1, and the last paragraph thereof reads as follows:

"Any advertising which, in the opinion of the RCA Victor district office, is misleading or contrary to RCA Victor's established policy will not be eligible for credit."
[underlining added]

Mr. A. O. Lawson stated with respect to the advertisements published on March 25, 1954, that it had been the intention of Lawson Appliances to claim assistance on the part of the company under such co-operative advertising plan (Evidence, April 21, 1954, p. 34). The company's policy with respect to co-operative advertising is, of course, only one phase of its distribution policy but it may be noted that the company's franchise for television sets contains only the following general reference to advertising:

"The dealer agrees that his use of RCA Victor trade marks and corporate name in advertising, on displays and on the premises, will at all times be in accordance with RCA Victor's policies as advised from time to time."

(Exhibit 2)

It would therefore seem that, should the action of the company through its Toronto representatives on March 25, 1954 have been prompted by their conviction that the advertising above referred to was misleading, unethical and contrary to company policy, the penalty imposed in this respect upon Lawson Appliances went far beyond the

withholding of credit for advertising provided for under company policy quoted above.

After due consideration of the matter, the Commission has come to the conclusion that cancellation of the franchise for this reason is a matter directly between the parties. The action on the part of the company's Toronto manager, however drastic, does not establish that his real reason in cancelling the franchise was an intent to punish Lawson Appliances for having sold or offered to sell RCA Victor products at prices lower than those specified in the suggested price list.

Furthermore, as we have indicated above, it appears that this question of the misleading or unethical nature of the advertising concerned may not have been the only motive which prompted Mr. Boothe's action. Although the Commission may not think that the latter's attitude should have been that which he did in fact adopt, the action, on these grounds, is not the issue before the Commission. We are called upon, not to decide whether or not a particular action of company administration was, as such, inappropriate, but rather to ascertain whether or not RCA Victor has refused to supply its products to Lawson Appliances for the reason that the latter would not sell or offer to sell these products at a specified resale price. On this point we have already expressed our opinion. We feel called upon to make these concluding remarks because, so far as the evidence goes, the drastic step of cancelling the franchise was taken without any effort first being made on the part of the company to advise Lawson Appliances in any way that their advertising was regarded as misleading by the company.

(Sgd.) A. S. Whiteley

Member

(Sgd.) Guy Favreau

Member

Ottawa,
October 25, 1954.

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